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In re Application of
Patrick Brouhon et al.
Application No. 10/661,000
Filed: September 10, 2003
Attorney Docket No. B-5233 621240-1

OFFICE OF PETITIONS

: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)

This decision is in response to the petition filed May 27, 2004 (with a four month extension of time request), under 37 CFR 1.47(a), in response to the Notice to File Missing Parts "Notice" mailed December 2, 2003.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on September 10, 2003, naming Patrick Brouhon and Ira Goldstein but without a signed declaration. Accordingly, on December 2, 2003, a "Notice of Incomplete Application" was mailed, requiring *inter alia* a properly executed oath or declaration.

In response, the present petition was filed with an oath or declaration signed by inventor Brouhon on his own behalf and on behalf of non-signing inventor Goldstein. Petitioners seek status under 37 CFR 1.47(a) based on the fact that on more than one occasion email messages with the declaration and power of attorney and assignment papers were mailed to Mr. Goldstein at the last known email address, that telephone messages were left at Mr. Goldstein's last known telephone number and that letters were mailed to Mr. Goldstein at his last known address, but Mr. Goldstein has neither acknowledged receipt of the email messages or the mailings delivered by DHL Courier, returned an executed oath or declaration or returned the telephone calls. Petitioner claims that they have put forth diligent efforts to have the oath or declaration executed and that Mr. Goldstein has refused to comply.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and
- (4) a statement of the last known address of the non-signing inventor.

The present petition lacks item (1).

In regards to item (1), petitioners have not provided sufficient proof that a copy of the application (specification, including claims, drawings, if any, and the declaration) was sent to the non-signing inventor. The petition shows that the declaration and the assignment were attached to the email messages sent to Mr. Goldstein but there is nothing to show that the complete application was sent to Mr. Goldstein. Thus, there is no evidence to show that Mr. Goldstein had the benefit of seeing the application.

Petitioners may show proof that a copy of the application was sent or given to the non-signing inventors for review by providing a copy of the cover letter transmitting the application papers to the non-signing inventors or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

Likewise, before a *bona fide* refusal can be shown, the non-signing inventor must have been given an opportunity to review the application. Therefore, petitioners must show proof that the non-signing inventor refuses to sign the declaration after being sent or given a copy of the application papers. If there is a written refusal, petitioners should submit a copy of that refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703)305-4497.



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